IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1056 OF 2003

The State of Maharashtra ... Appellant

V/s

Vaishali Balkrishna Parab & Ors. ... Respondents

Mr.K.V. Saste, APP for the State.

Coram : V.M.Kanade,J.
Dated : 12/04/2005.

P.C. :-

1 The State has preferred this appeal against the judgment and order passed by the Judicial Magistrate First Class, Kudal in regular criminal case No.57 of 2002. By the said judgment and order dated 04/04/2002 the trial court acquitted the accused of the offence punishable under sections 324, 323, 504, 506 read with 34 of the Indian Penal Code.

2 The prosecution case in brief is that on 1010.2002 at about 4.45 p.m. all the accused viz. Sou Vaishali Balkrishna Parab accused No.1, Sou Laxmi Dhondi Dhuri accused No.2 and Pramod Dhondi Dhuri accused No.3 started demolishing the compound fence and plants belonging to the complainant's family. The complainant's mother Parvati had

questioned the accused why they were cutting the hedge. All the accused abused Parvati and started beating her by accused Vaishali. The complainant's mother raised shouts and in response to the same,P.W.2 Dilip and P.W. Shankar Morye came there to rescue her. It is alleged that Vaishali assaulted the complaint with scythe on the right leg below knee. It is further alleged that she also assaulted P.W.4 on his head and thereafter all the accused assaulted P.W.4,Shankar Morye by kick and fist blow on his body. It is further alleged that the accused abused in filthy language and had threatened to kill them and thereafter left the spot. The complaint was registered by the Kudal Police Station. The investigating officer,P.W.7 recorded the statements of the witnesses. The charge-sheet was filed against the accused. Thereafter, the charge was framed against the accused. However, the accused pleaded not guilty to the said charge. The prosecution examined seven witnesses. The trial court while appreciating the evidence on the record has come to the conclusion that there was no evidence against the accused on all the counts and therefore, the accused were acquitted of the offence.

4 The learned APP has taken me to the judgment and order of the trial court and also the record and proceedings of the trial court.

5 From the perusal of the evidence of eye witnesses

who were examined by the prosecution it can be seen that they had given different versions regarding the incident in question. The prosecution has not examined the comlainant's mother Parvati. In my view, the prosecution ought to have examined this prime witness as she would have been in a position to depose about the genesis of the said incident. There are some glaring contradictions in the statements of eye witnesses. P.W.1 Dilip has not stated that Prakash was present to the incident happened. Similarly, P.W.4 Shankar Morye also has not stated about the presence of Prakash at the time of theincident. Even P.W.5 Laxman Shankar Morye also has not stated in his evidence that Prakash was present and he has witnessed the incident. The prosecution, however, has examined Prakash as eye witness. He has stated that all the accused were assaulted Shankar Morye and his mother by kick and fist blows. The defence has proved his version regarding assault on the complainant Shankar and his mother Parvati. The version and statement before the police has been duly proved by the defence. P.W.5, Laxman Morye who

was examined as eye witness has admitted that there was enmity between the accused family and complainant's family. According to this witness the incident took place in between the bore well,pump and his house. However, other eye witnesses viz. Dilip and Shankar have stated that incident took place in their compound. From the perusal of spot panchanama, it can be seen that incident in question

took place on the road and not in the compound of the

complainant. From the perusal of evidence of Dr.Arvind Chopade,P.W.8 it can be seen that injuries described in the certificate issued by him do not correspond to the statements made by the witnesses. Thus, considering all the statements of the accused and non-examination of material witness viz. Parvati and the discrepancy in the medical evidence and criminal evidence, the charges framed against the accused are not beyond reasonable doubt. In my view the finding recorded by the trial court is neither unreasonable nor perverse. Thus, I do not see any reason to interfere with the judgment and order passed by the trial court. Criminal appeal is accordingly dismissed.

(V.M.Kanade, J.)